88-166

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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NUMBER 87-3786

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

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JO ANN PURCELL LEVERT
PETITIONER

VERSUS

SAMUEL LOGAN LEVERT, JR.
RESPONDENT

* * * * * * * * * * * * * * *

PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

* * * * * * * * * * * * * * *

BRIEF FOR PETITIONER

Jo Ann Purcell Levert
3229 Chapelwood Drive
Baton Rouge, Louisiana 70816
Phone (504) 293-5566

QUESTIONS PRESENTED FOR REVIEW

1. Under diversity jurisdiction, does a citizen of Louisiana have access to federal court to adjudicate against a citizen of Ohio for tort damages in the nature of alleged perjury, made under oath in a family law matter presumably to defeat paying increased child support?

2. When there is jurisdiction in State District court but not in Family Court, is there concurrent jurisdiction in federal court without abstention or exercise of the Domestic Exception underpinning policy reasons to encourage the telling of truth in Family Court or risk paying damages for false testimony?

3. Is the nature of the remedy and the relief sought resulting from an alleged perjured statement distinguished from modifying or relitigating a child support award?

CERTIFICATE OF INTERESTED PERSONS

The pro se petitioner certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

Jo Ann Purcell Levert, Petitioner
Dr. Samuel Logan Levert, Jr., Respondent
Donn Moss, Attorney for Respondent

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JO ANN PURCELL LEVERT
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* * * * * * * * * * *

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Jo Ann Purcell Levert

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States.

Jo Ann Purcell Levert, your petitioner, respectfully prays that a Writ of Certiorari issue to review the decision of the United States Court of

Appeals for the Fifth Circuit, which affirmed the judgment of the United States District Court for the Middle District of Louisiana, which dismissed petitioner's complaint on grounds that the Federal Court lacked subject matter jurisdiciton through the Domestic Relations Exception.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit is unreported and reproduced in Appendix A, infra. The opinion of the United State District Court for the Middle District of Louisiana is unreported.

STATEMENT OF JURISDICTION

On March 23, 1988, the judgment of the United States Court of Appeals for the Fifth Circuit affirmed the District Court's judgment dismissing petitioner's civil action for damages on grounds that the diversity suit lacked subject matter jurisdiction. (Appendix A, infra). Jurisdiction of this Court is invoked under 28 U.S.C. Section 2101(c) and Rules 17.1(a) and 17.2 of the United States Supreme Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Article III, Section 2 of the United States Constitution provides in pertinent part as follows:

> The judicial Power shall extend to all...Controversies between Citizens of different States..

The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1332 in pertinent part as follows:

> Section 1332. Diversity of citizenship; amount in controversy; costs
>
> (a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000 exclusive of interest and costs, and is between
>
> (1) citizens of different States;....

The statutory provisions of Louisiana Revised Statutes 13:1401 establishing separate jurisdiction from the State District Court and the Family Court are set out as follows:

> Section 1401. Family court for the parish of East Baton Rouge; establishment; jurisdiction
>
> There is hereby established the family court for the parish of East Baton Rouge, which shall be a court of record with exclusive jurisdiction in the following proceedings:
>
> ...(7) All actions for divorce, separation from bed and board, ...alimony and support, ...as well as of all matters incidental to any of the fore going proceedings, including but not restricted to the ...cumulation of and rendering executory of alimony....

STATEMENT OF THE CASE

This matter comes before the Supreme Court of the United States on a Petition for Writ of Certiorari and Review by complainant, Jo Ann Purcell Levert (hereinafter Jo Ann). The Fifth Circuit Court of Appeals affirmed the judgment of the Middle District of Louisiana, the Honorable John V. Parker presiding.

Jo Ann's civil action against Samuel Logan Levert, Jr. (hereinafter Samuel) has been dismissed on grounds that federal courts will abstain from subject matter jurisdiction in domestic cases. This Honorable Court is requested to distinguish between a domestic case seeking modification of a child support award, (a family court matter), and a

tort case between former spouses seeking damages from alleged perjury which conceals income to avoid child support, (a civil action not particular to domestic matters).

Dismissal of this claim will allow a former spouse to allegedly conceal his actual earnings and avoid paying reasonable child support without redress for the civil wrong or repair the injury in federal court. That the Court review this matter will impact on all of family law. The turning point will be an obligation to tell the truth and risk paying reasonable child support OR pay burdensome damages for false testimony. Inequities need not exist at the expense of the family. In March 1987, Jo Ann filed suit in federal court seeking

damages for injuries she and her five children suffered after discovering that Samuel had apparently given perjured testimomy in Louisiana Family Court to avoid paying an increase in child support. The federal action specifically seeks damages caused by tortious conduct. Significantly, the tort action dose NOT impose upon the federal courts a claim to modify child support. The claim does ask for an adjudication of damages when a party seemingly conceals his actual earnings through false testimony intentionally made to avoid the duty of reasonable support. Since Jo Ann resides in Louisiana and Samuel resides in Ohio, jurisdiction is based on diversity of citizenship of the parties and on an amount in controversy exceeding $10,000

exclusive of interest and costs.

Jo Ann and Samuel were once married to each other, having divorced in 1978. Their divorce pre-dated joint custody. The parties, however, created an atypical arrangement for their five children achieving joint custody in fact but not in law. In the beginning, Samuel accepted legal custody and Jo Ann had physical custody. Thereafter, Samuel tried physical custody. The five children shared both parents equally. The ancillaries of divorce such as alimony and/or child support were never litigated until 1983 when Samuel moved to Ohio. At that time, Jo Ann sought Joint Custody, child support and alimony in the Louisiana Family Court. By consent judgment, Jo Ann received sole custody

and the five children remained with her in Louisiana. Samuel agreed to pay $1,000.00 a month child support. In January, 1984, Jo Ann filed in Family Court for an increase in child support to $2,000.00 per month based on Samuel's increased ability to pay and Jo Ann's increased needs. Samuel's testimony under oath in that rule gives rise to the tort claim sued upon in federal court. Based on the evidence submitted, the Family Court denied an increase in child support. Jo Ann appealed in State Court, submitting the evidence and testimony as elicited at trial. The findings in Family Court, although formed on alleged unreliable testimony, became final in March 1986. A child support award may be modified on the needs and circumstances

at the time of the next rule. A modification of payment will not apply retroactively. Keep in mind that some of the five children have reached the age of majority by this time and Jo Ann has increased her earnings after finishing her formal education.

The complaint alleges that perjury is an intentional act that has caused actual and emotional damages. The damages to be proven at trial consists of emotional distress, embarrassment and inconvenience experienced when, for example, Jo Ann became economically impoverished; the children received free school lunches; college children were elibible for the Pell Grant awarded on economic need; Samuel's life style improved. For a federal court to find

injury, it only has to examine whether reasonable minds would agree that the results at the first trial would be different upon proving the facts as pleaded in the complaint. The substance of the claim does not modify a child support judgment in Family Court. The substance of the claim does determine whether perjury existed and if the wrong caused injury.

SUMMARY OF THE ARGUMENT

The Fifth Circuit Court of Appeals and Middle District of Louisiana erred in applying the "domestic relations" exception to the facts of this case. The domestic relations exception is narrow and should apply only to those traditional areas of domestic relations such as modifying child support.

The substance of this claim does not modify child support awarded in a Louisiana Family Court. The substance of this claim determines whether perjury existed and, if so, the amount of injury suffered just like in other tort actions.

The United States Constitution in Article III, Section 2, grants concurrent jurisdiction for civil actions in either

State District Court or Federal District Court when the parties are citizens of different states. The jurisprudence defining the "domestic relations" exception supports the conclusion that the Federal Court has jurisdiction. The La. R. S. 13:1401 provides that the Family Court in Louisiana does not divest the State District Court of jurisdiction in civil matters.

And finally, dismissal of this claim will allow the alleged perjured testimony to stand, concealing actual earnings and avoiding reasonable support without redress for the civil wrong. A review of this matter will impact on all of family law by encouraging the truth in Court or risk burdensome damages for false testimony.

ARGUMENT

This case presents the legal issue of whether federal court has jurisdiction over the nature of the claim and the relief sought as alleged in the Complaint set out in the Appendix at B.

The nature of the claim is clearly a civil action for a tort arising out of Samuel's alleged perjured testimony. A civil action for tort is not the same thing as the alleged crime of perjury, or sanctions for contempt on the court, although these sometimes share common features. In fact, the distinction between tort and crime "lies in the interests affected and the remedy afforded by law." William L. Prosser, Law of Torts, 1971 at p. 7.

At the outset, it is necessary to distinguish between tort and crime. Neither criminal prosecution nor contempt proceedings are concerned with compensation for the injured victim against whom the alleged crime or contempt is committed. Id. at p. 7. Consequently, as far as the criminal law and the court hearing the contempt are concerned, the victim will leave the courtroom empty-handed. Id. at p. 7 and La. C.C.P. art. 227.

Sometimes, the same act may be both a crime against the state and a tort against an individual. However, the interests invaded are not the same. Id. at p. 7. To represent the different interests, two suits are necessary: one

in a civil tort action and the other in a criminal prosecution. Id.

For example, in a civil action claiming malicious prosecution, Federal Court has jurisdiction even though there is a contempt proceeding in State Court arising out of the same conduct. Northern Oil Company v. Socony Mobil Oil Company, 368 F. 2d 384 (2d Cir. 1966). Comity does not require that the Federal Court abstain from assuming jurisdiciton simply because of a pending contempt proceeding in State Court.

Jo Ann filed a civil tort action in federal court as the injured victim to compensate herself and five children for damages when, as the complaint alleges, the defendant intentionally made false statements while under oath in a judicial

proceeding before the Family Court for the Parish of East Baton Rouge. Samuel responded with a motion to dismiss the complaint on the grounds that the Federal Court lacks subject matter jurisdiction and argued that the facts of the complaint fall within the "domestic relations" exception to diversity jurisdiction. The Middle District, through the Honorable John V. Parker, granted the motion to dismiss. The Fifth Circuit Court of Appeals affirmed. The courts focused on the damage aspect of the complaint, concluding that Jo Ann is seeking to modify the child support award and to relitigate child support as her damages. Jo Ann contends that her complaint falls outside the narrow "domestic relations" exception. Thus, the

Federal Court has subject matter jurisdiction to adjudicate this matter and award her damages caused by the alleged civil wrong.

To illustrate the distinction between the remedy to modify or relitigate child support and the remedy for damages suffered in a civil wrong, i.e., alleged perjury to avoid paying reasonable child support, a review of Fenslage v. Dawkins, 629 Fed. 2d 1107 (1980) is in order. The Fifth Circuit granted jurisdiction on a complaint filed in Federal Court for the purpose of compensating the mother for damages she suffered when the father wrongfully took the children in violation of the custody decree rendered in a State District Court. The Fifth Circuit identified the

nature of that complaint as a tort action clearly compensable under diversity jurisdiction in Federal Court and distinguished a remedy which would seek the jurisdiction of the Federal Court to either return the kidnapped child or relitigate custody.

In the instant matter, Jo Ann's complaint is maintained for the purpose of compensating an injured mother for the emotional damage and debts she and her five children suffered when the father, according to the complaint, wrongfully avoided reasonable child support. The jurisdiction in the Federal Court is for a remedy compensating unjust poverty, embarrassment, inconvenience, necessary debts. Jurisdiction in the Federal Court does not seek to modify the child support

awarded in Family Court or relitigate child support. The substance of the claim seeks jurisdiction to determine whether or not perjury existed and, if so, whether reasonable minds would agree that the wrongful conduct caused injury. This distinction grants subject matter jurisdiction in federal court. The nature of the complaint as pleaded is outside the domestic relations exception. There should be no abstention from jurisdiction.

LAW AND ARGUMENT

The original and amended complaint allege that Jo Ann is a resident of Louisiana and Samuel is a resident of Ohio. The claim is a civil action for

damages in excess of $10,000, exclusive of interest and costs, resulting from an alleged false statement made by Samuel. Under the United States Constitution, Article III, Section 2, the judicial power extends to Federal Courts to litigate controversies between citizens of different states. The jurisdiciton of this Court is invoked under Title 28, United States Code, Section 1332 in pertinent part as follows:

> Section 1332. Diversity of citizenship; amount in controversy; costs
>
> (a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000 exclusive of interest and costs, and is between-
>
> (1) citizens of different States;....

The statutory provisions of Louisiana Revised Statutes 13:1401 establishing separate jurisdiction from the State District Court and the Family Court are set out as follows:

> Section 1401. Family court for the parish of East Baton Rouge; establishment; jurisdiction
>
> There is hereby established the family court for the parish of East Baton Rouge, which shall be a court of record with exclusive jurisdiction in the following proceedings:
>
> ...(7) All actions for divorce, separation from bed and board, ...alimony and support, ...as well as of all matters incidental to any of the fore-going proceedings, including but not restricted to the ...cumulation of and rendering executory of alimony....

Jurisdiction of This Honorable Court is invoked under 28 U.S.C. Section 2101(c) and Rules 17.1(a) and 17.2 of the

United States Supreme Court. The questions raised by the dismissal of this suit focus on whether or not the jurisprudential "domestic relations" exception to diversity jurisdiction applies to the nature of the complaint and to the remedy for damages claimed from the alleged perjured testimony.

The general rule is that a federal district court in a diversity case has the same jurisdiction as does the state court of general jurisdiction in the state where the federal district court is sitting. Nichols v. Marshall, 491 F.2d 177 (10th Cir. 1974). In the present matter, by grant of limited jurisdiction to Family Court, the Louisiana District Court retains general jurisdiction for civil actions even though the situation

may involve litigants who were once married to each other and the cause of action arose in a proceeding in Family Court. R.S. 13:1401. Jo Ann has absolutely no remedy in Family Court for damages arising out of alleged tortious conduct. See Id. Therefore, Jo Ann could have sued in State District Court but she chose to pursue her remedy in Federal Court under the grant of concurrent jurisdiction.

In Cole v. Cole, 633 F.2d 1083 (4th Cir. 1980), the Court outlined the "domestic relations" exception and pointed out the reasons why the dispute between ex-spouses in that civil action were outside the exception as follows:

> "Not all family feuds, however, fall directly into the specialized category of true domestic relations cases (primarily divorce, alimony,

> child custody and support). A district court may not simply avoid all diversity cases having intrafamily aspects. Rather, it must consider the exact nature of the rights asserted or of the breaches alleged. As Judge Weinstein wrote in the Spindel case: "A federal court is not deprived of competence merely because the parties involved are husband and wife or the controversy might be termed a 'marital dispute'...if a woman were suing her former husband for assault and battery in federal court, no one would question the court's power to award the plaintiff damages." 283 F.Supp. at 812. (Emphasis added).

The present matter like Cole, supra, does not present any true domestic relations claims. Although the parties were marriage partners, the duty to refrain from perjury does not arise out of or require, in order to give rise to the duty, a present or prior family relationship. Samuel owed a duty to tell the truth in the Family Court proceeding,

not because he had once been married to Jo Ann, but because of the oath he took before the Court. The principals enunciated by the Court in Cole, supra, establish that the "domestic relations" exception to Diversity Jurisdiction is a narrow exception.

The fifth Circuit has acknowledged that the domestic relations exception to diversity jurisdiction is a narrow exception in Crouch v. Crouch, 566 F.2d 486 (5th Cir. 1978). Crouch was an action between former spouses for damage caused by the breach of a voluntary separation agreement. The trial court held in favor of the aggrieved ex-wife, finding that there was jurisdiction and that the ex-wife was entitled to recover on the merits of the case. On appeal,

the defendant argued that the Federal Court should decline jurisdiction because the parties had been married and the subject matter of the suit involved a voluntary separation agreement with alimony, thus falling within the exception. The Fifth Circuit upheld the trial court's assertion of jurisdiction and also affirmed the merits of the decision in pertinent part as follows:

> We are faced here with no questions of custody or parental rights, no pending state court action or agreement to litigate in state court, and no threat that the former spouses will seek to play one court system off against the other. Solomon v. Soloman, 516 F.2d at 1025. Nor do we perceive any strong state interest in the adjudication of this suit or any special competence on the part of state courts, other than their superior ability to interpret state law, which is always present in diversity suits. Because none of the rationales for the domestic relations exception obtained in this case-with the possible exception of

> congested federal dockets-we uphold the district court's exercise of jurisdiction and proceed to determine the merits." Crouch, supra, 547-548.

The policy reasons underpinning the "domestic relations" exception simply are not present in this matter. Conversely, policy reasons support a grant of jurisdiction to encourage the telling of truth under oath during a family law matter or risk burdensome damages for false testimony.

CONCLUSION

The complaint states a cause of action for damages resulting from an alleged false statement made under oath in a family law matter. The action for damages does not seek to modify or relitigate child support awarded in a Louisiana Family Court. The remedy sought is to determine whether perjury existed causing unjust poverty, embarrassment, inconvenience, unnecessary debts to the mother and her five children. The nature of the remedy is clearly a civil tort action outside the domestic relations exception. The law, jurisprudence and complaint support the conclusion that Federal Court has jurisdiction in this case which will

impact on all family law matters by encouraging truth in Court or risk paying damages for false testimony.

Respectfully submitted,

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APPENDIX

A. Opinion of the United States Court of Appeals for the Fifth Circuit rendered on March 23, 1988, reproduced, infra.

B. Amended Complaint, reproduced, infra.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 87-3786
Summary Calendar

JO ANN PURCELL LEVERT,

Plaintiff-Appellant,

versus

SAMUEL L. LEVERT, JR.,

Defendant-Appellee.

Appeal from the United States District Court for the Middle District of Louisiana
(CA-87-166-A)

(March 23, 1988)

Before RUBIN, GARWOOD and JONES, Circuit Judges.*

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*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

GARWOOD, Circuit Judge:

Plaintiff-Appellant Jo Ann Purcell Levert (Jo Ann) appeals the district court's dismissal of her diversity action against defendant-appellee Samuel L. Levert, Jr. (Samuel) on the ground that subject matter jurisdiction was lacking. We affirm the district court's judgment, but modify it to clarify the basis for dismissal.

Facts and Proceedings Below

In January 1978, Samuel and Jo Ann were divorced from one another by a Louisiana court. Pursuant to the divorce decree, Samuel was awarded custody of their children. In 1983, Jo Ann filed in the Louisiana court a rule seeking alimony, joint custody, and child support. In December 1983, Samuel and Jo Ann reached a settlement, and a

stipulated judgment was entered by the Louisiana court pursuant to which Samuel was to pay Jo Ann $1,000 per month in child support. In January 1984, Jo Ann filed in the same court a rule for an increase in child support from $1,000 per month to $2,000 per month, alleging increased ability on the part of Samuel to pay and increased need on the part of their children. Samuel responded by filing a rule seeking a decrease in the amount of child support. In February 1984, the Louisiana court held a hearing to resolve this matter. At the hearing, Samuel testified that his sole sources of income were his medical practice and his stepchildren's child support. Subsequently, the Louisiana court entered a judgment denying relief to both parties. Jo Ann appealed this judgment

to the Louisiana First Circuit Court of Appeals, which affirmed. She then applied for writs of review to the Louisiana Supreme Court, but these were denied. Shortly after the denial of the relief in connection with the first rule that Jo Ann filed in 1984, Jo Ann filed another rule in the Louisiana court seeking an increase in the amount of child support. In July 1984, that court held a hearing at which Samuel gave the same testimony regarding sources of income that he had given previously. although the parties do not specifically so state, we assume that relief was again denied.

On March 9, 1987, Jo Ann filed this lawsuit alleging that in connection with the above-referenced proceedings Samuel made false statements about his income in

an effort to defeat her attempts to secure an increase in child support in those proceedings. She further alleged that, as a consequence, she suffered extreme emotional distress, inconvenience, and embarrassment, as well as the loss of "reasonable and entitled child support." In her original complaint, Jo Ann sought damages of $39,000 for lost child support and $150,000 for emotional distress and other items. In her amended complaint, Jo Ann sought the same sum -- $189,000 -- but failed to distinguish the lost child support from the other items of damage. The only basis of jurisdiction asserted by Jo Ann was diversity of citizenship (and that is the only basis that she asserts on appeal). On September 2, 1987, Samuel filed a motion to dismiss

for want of subject matter jurisdiction. On October 2, 1987, the district court granted Samuel's motion to dismiss on the groud that this action fell within the domestic relations exception to diversity jurisdiction. On October 6, 1987, the district court entered judgment accordingly. This appeal followed.

Discussion

In this Circuit, it is well-established law that the federal courts do not have subject matter jurisdiction over disputes involving marital status, child custody, or other aspects of domestic relations law, even though the requirements of diversity jurisdiction are otherwise met. See Rykers v. Alford, 832 F.2d 895, 899 (5th Cir. 1987); Brown v. Hammonds, 747 F.2d 320, 322 (5th Cir. 1984); Jagiella v. Jagiella,

647 F.2d 561, 564 (5th Cir. 1981); Crouch v. Crouch, 566 F.2d 486,487 (5th Cir. 1978); accord Csibi v. Fustos, 670 F.2d 134, 135-137 (9th Cir. 1982); Sutter v. Pitts, 639 F.2d 842, 843 (1st Cir. 1981); Cole v. Cole, 633 F2d 1083, 1087 (4th Cir. 1980); Bossum v. Bossum, 551 F2d 474, 475 (2d Cir. 1976). See generally 13B C. Wright, A. Miller, & E Cooper, Federal Practice and Procedure Sec. 3609 (2d ed. 1984). Although this rule originated long ago through judicial construction of the predecessor to the federal diversity statute, 28 U.S.C. Sec. 1332, it continues to be supported by sound policy reasons. Among the more important are

> "(1) the state courts have greater expertise and interst in domestic matters; (2) such disputes often require ongoing supervision, a task for which the federal courts are not suited; (3) piecemeal adjudication

> of such disputes increases the chance of different court systems handing down incompatible decrees; and (4) such cases serve no particular federal interest, while crowding the federal court docket." Rykers, 832 F.2d at 899-900.

See Jagiella, 647 F.2d at 564; Crouch, 566 F.2d at 487. Application of this rule to the facts of any given case is equally well-settled: what controls is not the form or appellation the the parties choose to give the claim, but rather the substance of the claim itself. See Rykers, 832 F.2d at 900; Jagiella, 647 F.2d at 565.

Applying this rule to the present case poses no particular difficulty. Although Jo Ann styles her action as one in tort, her original and amended complaints make it clear that what she really seeks is the increase in child support that she was denied in state

court, plus compensation for the emotional distress that allegedly accompanied that denial. Whether the relief that Jo Ann sought in state court should have been granted because Samuel had greater income than he admitted is immaterial. What matters is that before the federal district court could have granted Jo Ann the relief she requested, it would have needed to make a de novo determination both of Samuel's ability to pay and of the proper level of child support. The federal court, in short, would have had to determine that Jo Ann was entitled to more child support than the Louisiana courts had awarded her. Clearly, these are matters that are peculiarly within the competence of the state courts. Moreover, if the district court had attempted to resolve these

matters, it would have allowed Jo Ann to play one court system off against the other, thereby creating the possibility of inconsistent court decrees. All the reasons that traditionally support the domestic relations exception to diversity jurisdiction are implicated here. For these reasons, then, it seems apparent to us that this case falls squarely within that exception. We therefore conclude that the district court acted correctly in dismissing this action on the ground that it lacked jurisdiction over the subject matter.[1]

---

[1]Since there was an absence of subject matter jurisdiction, we do not reach the potential issues of res judicata and the like which this scenario presented, as they are issues going to the merits. Likewise, we need not determine whether jurisdiction is lacking on some other ground, such as a federal district court's inability to review a state court judgment. See Carbonell v. La. Dept. of Health & Human Resources, 772 F. 2d 185 (5th Cir. 1985).

The only aspect of the district court's judgment with which we take exception is its failure to state that the action was dismissed for want of subject matter jurisdiction. Clearly, there is a significant difference between a normal dismissal, which is res judicata as to the merits of an action, and a dismissal for want of subject matter jurisdiction, which is res judicata only as to the issue of access to the federal courts. See Voisin's Oyster House, Inc. v. Guidry, 799 F.2d 183, 188 (5th Cir. 1986). Accordingly, in affirming the district court's judgment, we modify it to state that the dismissal was for lack of subject matter jurisdiction.

Conclusion

Because the present case falls squarely within the domestic relations exception to diversity jurisdiction traditionally recognized by the federal judiciary, we conclude that the district court acted correctly in dismissing this case on that ground. However, because the district court's judgment did not expressly state that the reason for this dismissal was the lack of subject matter jurisdiction, we modify the judgment to make clear that the dismissal was for that reason.

AFFIRMED AS MODIFIED

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

JO ANN PURCELL LEVERT Complainant

VS.

SAMUEL L. LEVERT, JR. Defendant

CIVIL ACTION NUMBER 87 0166 SECTION A

DEMAND FOR TRIAL BY JURY

AMENDED COMPLAINT FOR DAMAGES FOR PERJURED STATEMENTS

Complainant amends the original complaint filed in these proceedings on March 9, 1987 by changing portions of paragraphs number 8, 16, 17, and 33, and said complaint should read as follows:

The petition of Jo Ann Purcell Levert, domicilied in the Parish of East Baton Rouge, Louisiana, respectfully represents that:

1.

Defendant, herein, Samuel Logan Levert, Jr. (hereinafter "Dr. Levert"), domiciled and residing in the County of Gallia, Gallipolis, Ohio, is indebted to petitioner in the sum of a TWO HUNDRED THOUSAND ONE HUNDRED THIRTY-TWO AND 45/100 ($260,132.45) DOLLARS, with legal interest thereon from date of judicial demand until paid, reasonable attorney's fees and all costs of these proceedings for the following reasons, to-wit:

2.

Complainant is a citizen of the State of Louisiana, and resides in the Parish of East Baton Rouge, Louisiana. Defendant is a citizen of the State of Ohio, and resides in the City of Gallipolis, Ohio. The matter in

controversy, exclusive of interest and costs, exceeds $10,000.00.

3.

The parties were formerly husband and wife and were divorced in those proceedings entitled "Samuel L. Levert, Jr. versus Jo Ann Purcell Levert, Number 41,542; Division B, The Family Court, Parish of East Baton Rouge, State of Louisiana". On December 13, 1983, in connection with a rule to set child support and alimony, the parties agreed to a compromise settlement of child support for complainant's four (4) minor children, whereby the plaintiff agreed to accept the sum of ONE THOUSAND AND NO/100 ($1,000.00) DOLLARS per month in globo.

4.

The agreement to accept the amount of monthly child support stated above was

based on Dr. Levert's assertion that his sole source of income was from his new employment with the Holzer Medical Clinic, Gallipolis, Ohio, and from no other source.

5.

At the time the parties entered the above compromise settlement, Dr. Levert was severing his ties as a partner in the Baton Rouge Neurological Neurosurgical Association (hereinafter referred to as "BRNNA") and its subsidiary corporation, Sam L. Levert,Jr., a Professional Medical Corporation, for his practice of Neurology in Baton Rouge, Louisiana, but that the terms of the severance agreement were uncertain on December 13, 1983 because Dr. Levert did not know whether or not he would receive or owe money to BRNNA and/or his professional corporation.

6.

In January 1984, complainant, in the same proceedings, filed a rule for an increase in child support from ONE THOUSAND AND NO/100 ($1,000.00) DOLLARS to TWO THOUSAND AND NO/100 ($2,000.00) DOLLARS per month based on both an increased ability on the part of Dr. Levert to pay arising out of his severance income settlement with BRNNA and his Professional Corporation and an increased need on the part of complainant for rearing the parties five dependent children.

7.

Defendant responded by filing a reconventional demand requesting a reduction in child support.

8.

For the hearing of the above rule on February 14, 1984, Dr. Levert returned to Louisiana without producing subpoenaed documents which allowed the said Dr. Levert to conceal his actual income and severance agreement with BRNNA and his Professional Corporation.

9.

At the hearing on February 14, 1984 and under oath, Dr. Levert submitted a written statment fixing his total income at ONE HUNDRED TWO THOUSAND AND NO/100 ($102,000.00) DOLLARS per year made up of EIGHT THOUSAND THREE HUNDRED THIRTY-THREE ($8,333.00) DOLLARS per month, from Holzer Medical Clinic in Gallipolis, Ohio and SIX HUNDRED AND NO/100 ($600.00) DOLLARS per month child support for his step children.

10.

Additionally, at the hearing on February 14, 1984, Dr. Levert affirmed under oath that the sole source of his income was from the Holzer Medical Clinic in Gallipolis, Ohio and step children's child support.

11.

Based on Dr. Levert's sworn testimony, Family Court trial judge denied relief to both parties, reinforcing that Dr. Levert pay ONE THOUSAND AND NO/100 ($1,000.00) DOLLARS per month child support in globo.

12.

In connection with a second rule filed in the same proceedings in the Family Court matter, heard on July 31, 1984, Dr. Levert again testified, under oath, that the sole source of his income

was from the Holzer Medical Clinic in Gallipolis, Ohio, again at the rate of $8,333.60 per month. He, under oath, again misstated his income and concealed substantial income which was material to the issues before the court, both on February 14 and July 31, 1984.

13.

Following the first hearing in February, petitioner appealed to the Louisiana First Circuit of Appeals, which affirmed the trial court's decision, and, after timely filing an application for writs of review to the Louisiana Supreme Court, that court denied her application for writs on March 7, 1986, with two (2) judges voting to grant the writs. At that time, complainant's claims for an increase for child support were finally denied.

14.

Complainant alleges on information and belief that defendant intentionally concealed and intentionally testified falsely before the trial court, both on February 14 and July 31, 1984 for the sole reason of avoiding paying increased support as requested by complainant.

15.

Complainant alleges that the following instances which were discovered subsequent to the hearing cited above comprise the basis for her claims of damages against defendant in this lawsuit:

16.

From the date of the compromise agreement entered into on December 13, 1983 until the date of the February 14, 1984, Dr. Levert deposited alleged income

in the amount of EIGHTY ONE THOUSAND SEVENTY EIGHT AND 46/100 ($81,078.46) DOLLARS into his personal checking account No. 2881-411 at Louisiana National Bank in Baton Rouge, Louisiana (hereinafter "LNB").

17.

Additionally, after December 13, 1983 and until February 14, 1984, Dr. Levert deposited income into his Professional Corporation account No. 0376-558 at LNB in the sum of FOURTEEN THOUSAND EIGHT HUNDRED THIRTY SIX AND 67/100 ($14,836.67) DOLLARS, which sum includes a deposit on January 3, 1984 from BRNNA in the amount of EIGHT THOUSAND FIVE HUNDRED AND NO/100 ($8,500.00) DOLLARS; a deposit on January 17, 1984 from BRNNA in the amount of TWO THOUSAND EIGHTEEN AND 82/100 ($2,018.82) DOLLARS.

18.

Furthermore, on February 15, 1984, the day after Dr. Levert testified at the trial on February 14, 1984 that he had no other income than his stated salary from Holzer Medical Clinic in Gallipolis, Ohio, the said Dr. Levert deposited THREE THOUSAND SIX HUNDRED SEVENTY FIVE AND 23/1000 ($3,675.34) DOLLARS from BRNNA into his Professional Corporation account no. 0376-558 at LNB.

19.

Significantly, on February 15, 1984, defendant signed a check drawn on his Professional Corporation account no. 0376-558 at LNB made payable to the order of himself in the amount of THREE THOUSAND SIX HUNDRED SEVENTY FIVE AND 34/1000 ($3,675.34) DOLLARS which check is endorsed by said Dr. Levert.

20.

Then on February 21, 1984, Dr. Levert deposited THREE THOUSAND SIX HUNDRED SEVENTY FIVE AND 34/1000 ($3,675.34) into his personal checking account No. 04-7667-4 at the Commercial and Savings Bank, Gallipolis, Ohio (hereinafter "C&S").

21.

On February 21, 1984, Dr. Levert made another large deposit from allegedly other income in the amount of EIGHTEEN THOUSAND TWO HUNDRED SIXTY NINE AND 37/100 ($18,269.37) DOLLARS into C&S account no. 04-7667-4 at Gallipolis, Ohio.

22.

On Fecruary 24, 1984, Dr. Levert again deposited THREE THOUSAND SIX HUNDRED SEVENTY FIVE AND 33/100

($3,675.33) DOLLARS from BRNNA into his Professional Corporation account no. 0376-558 at LNB.

23.

Then again on February 29, 1984, Dr. Levert deposited into C&S account no. 04-7667-4 at Gallipolis, Ohio, a check drawn on his Professioal Corporation account signed by himself and made payable to himself in the amount of THREE THOUSAND SIX HUNDRED SEVENTY FIVE AND 33/100 ($3,675.33) DOLLARS.

24.

Additionally, on February 29, 1984, Dr. Levert deposited into account no. 04-7667-4 at Gallipolis, Ohio, his check in the amount of FIVE THOUSAND NINETY ONE AND 39/100 ($5,090.39) DOLLARS, his supposedly sole and limited income.

25.

On March 1, 1984, Dr. Levert deposited into account no. 04-7667-4 at Gallipolis, Ohio, alleged income from LNB in the amount of NINE HUNDRED SEVENTY EIGHT AND 60/100 ($978.60) DOLLARS.

26.

Again on March 21, 1984, Dr. Levert deposited into C&S account no. 04-7667-4 at Gallipolis, Ohio, an amount of THREE THOUSAND SIX HUNDRED TWENTY FIVE AND 33/100) DOLLARS allegedly from his Professional Corporation.

27.

On April 2, 1984, Dr. Levert deposited into C&S account no. 04-7667-4 at Gallipolis, Ohio other identified income from BRNNA in the amount of TEN THOUSAND SEVEN HUNDRED EIGHTY TWO AND NO/100 ($10,782.00) DOLLARS.

28.

The said Dr. Levert also deposited into C&S account no. 04-7667-4 at Gallipolis, Ohio, his paychecks from Holzer clinic in the amount of FOUR THOUSAND EIGHT HUNDRED THIRTY SEVEN AND 71/100 ($4,837.71) DOLLARS on April 2, 1984 and FOUR THOUSAND EIGHT HUNDRED THIRTY SEVEN AND 72/100 ($4,837.72) DOLLARS on April 25, 1984.

29.

Furthermore, on or about January 19, 1984, LNB recorded an assignment of Dr. Levert's accounts receivable from BRNNA to be paid to LNB in the amount of FIFTY FIVE THOUSAND AND NO/100 ($55,000.00) DOLLARS.

30.

Complainant alleges that Dr. Levert knowingly had other income in excess of

his salary when he made sworn written and oral statements at the judicial proceedings on February 14 and July 31, 1984, that his sole income was limited to his salary from Holzer Clinic and his step children's child support.

31.

Complainant further alleges that Dr. Levert's false statements about his limited income were designed to defeat complainant's Rule for an Increase in Child Support from ONE THOUSAND AND NO/100 ($1,000.00) to TWO THOUSAND AND NO/100 ($2,000.00) DOLLARS per month.

32.

As a consequence of these unlawful and injurious acts upon petitioner and her five dependent children, petitioner has suffered extreme emotional distress, inconvenience and embarrassment as well

as loss of reasonable and entitled child support.

33.

Petitioner, individually and on behalf of her children, itemizes the damage for Dr. Levert's intentional and tortious false written and oral statements at the judicial proceedings on February 14, 1984 and July 31, 1984 as follows:

1)	Costs of Appeal, court and attorney fees	$11,132.45
2)	Embarrassment, inconvenience and extreme emotional distress and other general damages	$189,000.00
	TOTAL	$200,132.45

34.

Defendant is indebted to complainant for the amount set forth above.

Complainant requests trial by jury.

WHEREFORE, complainant prays that after due proceedings had there be judgment herein in favor of complainant, Jo Ann Purcell Levert, and against defendant, Dr. Samuel Logan levert, Jr., in the sume of TWO HUNDRED ONE HUNDRED THIRTY TWO AND 45/100 ($200,132.45) DOLLARS, with interest thereon from date of judicial demand until paid, reasonable attorney's fees, and all costs of these proceedings.

BY COMPLAINANT
IN PROPER PERSON:

JO ANN PURCELL LEVERT

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Application for Writs of Certiorari to the United States Supreme Court on Behalf of Petitioner has been placed in the U.S. Mail on June 21, 1988, postage prepaid, to Donn Moss, Counsel for Defendant, Suite B-1, 7737 Old Hammond Hwy., Baton Rouge, Louisiana 70809 and on this day, the Application in printed booklets has been mailed.

Baton Rouge, Louisiana, this ____ day of July, 1988.

JO ANN PURCELL LEVERT

Jo Ann P. Levert
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Baton Rouge, Louisiana 70816
Phone (504) 293-5566